IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No.221 of 2000

DATE OF DECISION: 24.07.2006

STATE OF HARYANA AND OTHERS

...APPELLANTS

VERSUS

GOVERDHAN LAL AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MAHESH GROVER

Present: Mr.M.S.Sindhu, DAG,Haryana.
Mr.Alok Jain.

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MAHESH GROVER, J.

The State of Haryana has filed the present appeal assailing the judgment of the learned lower appellate Court dated 06.03.1999. The plaintiffs-respondents filed the suit for seeking a declaration that they are owners in possession of plot purchased by them and also sought consequential relief of permanent injunction restraining the defendants from interfering in the peaceful possession and ownership of the plaintiffs over the plot, in question, except in due course of law. One Manohar Lal was allotted the disputed property in the year, 1949 being an evacuee property. The plot bearing No,405 measuring 500 square yards was situated in Chinaut Colony, Rohtak. Sanad Taksim Arazi Matruka Ex.P8 was duly issued in the name of said Manohar Lal and actual physical possession of the land was handed over by the Custodian to him. Manohar Lal sold this plot through a registered sale deed executed on 11.11.1970 and registered at Sr.No.2056 in favour of Sh.Pokhar Dass son of Ganga Ram who was the predecessor-in-interest of the plaintiffs-appellants No.1 to 3 and Smt.Satya

Devi, wife of Bhagwan Dass who was also one of the plaintiffs. Pokhar Dass and Satya Devi took actual physical possession of the said plot from Manohar Lal and the mutation regarding the same had been sanctioned in favour of both these persons. Pokhar Dass died intestate and the present appellants succeeded to half share of the estate of the said Pokhar Dass through a Will executed on 27.01.1982. It was on these basis that the plaintiffs-respondents pleaded that they were the owners in possession of half share of the suit property whereas Satya Devi who is (plaintiff No.4) was the owner of the remaining half share. It was further averred that house had been constructed on the said plot. The Tehsildar(Sales), Rohtak had issued a notice on 12.09.1989 questioning the possession of the respondents on the plot, in question. The respondents had duly submitted their objections but despite that the appellants are bent upon to dispossess the respondents from the plot, in question and had set up the same for auction. The said action of the appellants was impugned by filing the suit.

The appellants took up the objection that the Civil Court had no jurisdiction to try the suit in view of the specific provisions of Sections 36 and 46 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and Administration of Evacuee Property Act, 1950 respectively. On merits it was pleaded that the plot was in fact allotted to Manohar Lal in the year, 1953 on the ground that the allotment of 2 and a half units of land would be reduced from his allotment of rural land but later on the entire allotment of 4 standard, 7 and half units situated in Rohtak was cancelled and this fact was recorded in the revenue record vide rapat roznamacha No.40 dated 22.09.1962. Since the above allotment was cancelled hence, plot No.405 also stood cancelled automatically and Manohar Lal had no

right or interest in the property. Any subsequent transfer made by him in favour of the respondents was also bad.

The trial Court framed the following issues:-

1. "Whether the plaintiffs are owners-in-possession as alleged?OPP
2. Whether the order passed by defendant No.4 on 12.3.90 to put the plot on auction is illegal and ultravires as alleged?OPP
3. Whether the plaintiff is entitled for the injunction as prayed for?OPP
4. Whether the civil court has no jurisdiction to try the suit?OPD
5. Whether the plaintiffs have no right, title or interest to the suit land as alleged?OPD
6. Relief".

After appreciating the evidence on record, the trial Court dismissed the suit of the plaintiff-respondents upon which an appeal was filed before the learned lower appellate Court which was accepted and the judgment of the learned trial Court was set aside. This has resulted in the present appeal having been filed by the present appellants i.e. State of Haryana.

Mr.M.S.Sindhu, learned counsel for the appellant contended at the outset that the Civil Court has no jurisdiction to entertain the suit as the allotment had been made by the Custodian under a special law and if there was any dispute regarding the same then the respondents had the remedy by filing an appeal or revision under the Special Act i.e. Displaced Persons

(Compensation and Rehabilitiation) Act. It was further contended that the allotment in favour of Manohar Lal stood cancelled in the year, 1961 and due entry had been made in the rapat roznamacha in the year, 1962.

In this view of the situation, Manohar Lal had no right or title lying in the suit property and, therefore, any alienation made subsequent thereto could not be sustained in the eyes of law, for the reason that Manohar Lal had absolutely no right existing on the day when he chose to alienate the property. Reliance was also placed on Exhibit D-1, the document indicating that the allotment had been cancelled and that fact had been duly recorded in the rapat roznamacha.

Mr.Alok Jain, learned counsel for the respondents on the other hand contended that the Civil Court had the jurisdiction because the plaintiffs-respondents were not challenging the allotment or cancellation of any allotment rather the respondents were the bona fide purchasers of the suit property from Manohar Lal and they had every right to approach the Civil Court for the appropriate relief.

I have heard learned counsel for the parties and also perused the record.

It is an admitted fact that the respondents had purchased the suit property from Manohar Lal and they were in possession therein. The question that has to be determined now is whether the civil court had the jurisdiction to entertain the suit. Learned counsel for the appellant had relied upon a judgment reported as **Darbara Singh versus The Union of India and another 1972, PLR 381** to say that according to Section 36 of the Displaced Persons (hereinafter referred to as “the Act”), Act, 1954, the jurisdiction of the civil Court is specifically barred.

There is no dispute that the Act specifically ousts the jurisdiction of the civil Court. But that would be in the cases where an officer has purportedly acted in exercise of the powers conferred by him under the Act or has failed to exercise his jurisdiction under the Act and a challenge has been made to such actions of the said authority. In the instant case, the respondents have not impugned any action of the authorities under the Act. No challenge has been made to any allotment or cancellation of any allotment. It is only against the auction which was to be conducted by the appellants qua the suit property. The respondents' case was that they had purchased the suit property from Manohar Lal in the year, 1970. No notice had been served upon the respondents regarding the cancellation of the allotment of suit property.

I am inclined to accept the contention of the learned counsel for the respondents to say that the Civil Court had the jurisdiction to try the suit. The respondents had purchased this property in 1970 and had a long established possession thereon. Their possession was sought to be disturbed by the appellants. The respondents were not the direct beneficiary of any order passed by the authorities under the Act. Their rights were being affected by an action of the appellants and they had every right to approach the Civil Court which rightly exercised its jurisdiction.

The revenue record for the period 1982-83 (Exhibit P-9) shows Pokhar Dass (predecessor-in-interest of the respondents) to be owner in possession in equal share. The suit property had also been mutated in favour of said Pokhar Dass and Satya Devi on the basis of sale deed. No attempts were made by the appellants to challenge these revenue entries. The appellants have also failed to produce any evidence to show that the

title of agricultural land in favour of Manohar Lal stood cancelled whereas 'Sanad Taksim', Exhibit P-8 shows that Manohar Lal was allotted eight standard acres and 14 and ½ units of agricultural land by this document. Although in the written statement, the appellants had stated that 4 standard acres 7/1/2 units of Manohar Lal was cancelled on 03.08.1961 but the record speaks otherwise. There is, thus, ambiguity in the stand of the appellants. The whole case of the appellants was that since the entire agricultural land allotted to Manohar Lal had been cancelled, therefore, plot No.405 also stood automatically cancelled. This has not been substantiated by cogent evidence on record.

In view of this, there is no cogent evidence on record which would show that the allotment in favour of Manohar Lal qua the suit property had been cancelled. The respondents, who purchased the property on the basis of the existing record are,therefore, bona fide purchasers without any notice.

The respondents had purchased this property being bona fide purchasers and, therefore, the sale would be protected in view of provisions of Section 41 of the Transfer of Property Act. This Court in case of **Rattan Singh and another vs. Chief Settlement Commissioner, Haryana and others, 1978, PLJ, 47** has held as under:-

> "(a) When a situation is created by the Union of India, acting through its important functionaries under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act and the Rules framed thereunder, by transferring ownership for a sufficiently long time, during which transfers are made by the transferees from the Union of India, the bona fide purchasers for consideration from these transferees cannot be left to

> suffer. Such a situation calls for the invoking of Section 41 of the Transfer of Property Act for the rights acquired by the innocent purchasers from ostensible owners".

Even otherwise, concededly, the respondents are in possession of the property since, 1970, no notice whatsoever has been given to the respondents. Therefore, they were well within their rights to file a civil suit to protect their right under Section 41 of the Transfer of Property Act. Reliance was also placed on the judgment of this Court reported as **Kali Ram and others versus Union of India and others,1976 (78) PLR, 475** wherein it was held as follows:-

> "41. Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith".

The judgment is, therefore, straight way attracted to the facts of the present case.

In view of the detailed reasons mentioned above, it is held that the appeal deserves to be dismissed as the sale made by Manohar Lal in favour of Pokhar Dass (predecessor-in-interest of the respondents) was clearly protected by the provisions of Section 41 of the Transfer of Properties Act.

In view of this, the appeal being devoid of merits is dismissed as such.

July 24, 2006 (MAHESH GROVER)
seema JUDGE